Supreme Court, U.S.
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No._____

In The

SUPREME COURT OF THE UNITED STATES

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VIRGINIA D. HATCH, BILLY F. HATCH

Petitioners

v.

RALPH J. HARPLEY

Respondent

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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# PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the opinion issued by the 11th Circuit Court of appeals in this case on May 10, 2007 followed 11th Circuit "precedent" on the issue of seeking "Turnover and Injunction" under 11 USC 542 or 543 is controlled by 11 USC 546 thus creating a clear "Split of Authority" not only among the Circuits, but there is actually a split among the judges within the 11th Circuit as to when 11USC 542, 543 is to be used to obtain turn over and injunction as asked for by the Bankruptcy panel trustee in case No. 94-11705 and AP 2002-0655. Also if 11 USC 546 can or is required to be extended once the initial one or two year period expires; if the two year period starts anew after conversion, whether or not it is jurisdictional, whether it is a true statute of limitation and thus waivable, which in effect has totally or come close to destroying this courts opinion in *Northern Pipeline v. Marathon Pipeline* and all the safeguards Congress installed such as 28 USC 157 ( c ) ( 2 ) requiring the "consent of parties "shoehorned into bankruptcy court"; denying parties jury trials and due process.

2. Whether there is also a "split of authority" among the Federal Circuits as to whether claims are against the estate (assuming that it is a legal estate) or the estate and the debtor.

3. Whether 28 USC 581-589 is unconstitutional as written and as being administered by the courts and the U. S. Attorneys in America and by the U. S. Trustees, and encourages abuse of process which is a crime under 18 USC 241 and 242.

4. Whether "new evidence" discovered by petitioners on or about April 06, 2006, is dispositive of this case and if the information is of such magnitude that it warranted "remand" to the district court forthwith as petitioners brought the matter to the attention of the 11th Circuit Court of appeals by emergency motion on May 15, 2006, with more new evidence which was all supplied to all courts involved and which all courts ignored even when the documents in the new evidence proved fraud and conspiracy to commit fraud by all parties involved to include all court officers and the hired professionals.

5. Whether "Bond" is required or optional for panel trustees under 11 USC 322. In this case neither panel trustee has one dollar of bond, so the question is whether they were legally qualified to take their official duties and thus did they both sell stock illegally on the New York Stock Exchange with zero authority?

6. Whether the petitioners have and have always had a stay as a matter of right under the case of *In Re Wymer*, as included in the petitioners 4th amended notice of appeal in both bankruptcy cases prohibits the premature distribution of $215,000 by panel

trustee Harpley and his lawyer, Levine especially in light of the new evidence that kills all their claims to stock certificates.

7. Whether a settlement order in Bankruptcy has to be honored as Res Judicata (issue preclusion) in all future litigation and whether there was fraud committed in a motion by the panel trustee to revoke the discharge, abuse of discretion in the reopening and revocation of debtor Ramona Hatch Johnson Mayer's bankruptcy case.

8. Whether the attorneys and panel trustees, Ralph Jay Harpley and Dennis Jay Levine are entitled to any fees whatsoever in light of the "new evidence" presented to the court and subsequently disregarded on May 15, 2006 and June 06, 2006 and since the estate is in effect now administratively insolvent and there is no evidence of bond nor insurance by either the panel trustee nor his lawyer. The 11th Circuit Court of Appeals erred in not addressing these issues.

9. Whether the Bankruptcy Judge in the Florida Bankrupt Court could file a final order on February 06, 2003 or June 20, 2003 in case 94-11705 instead of a finding of fact and conclusion of law for submission to the district court. Such final order allowed the trustee to sell 3,931 shares of stock without waiting for conclusions of law and finding of fact to be accepted by the district court.

10. Whether the claim filed by plaintiff Ralph Jay Harpley and his attorneys Dennis Jay Levine and David Elrod Hicks in the Bankruptcy case of Defendant Petitioner Virginia D. Hatch, knowing that it was a false claim when it was filed on September 12, 2000, extinguishes all immunity for all parties involved in the two lawsuits/adversarial proceedings filed by debtor Ramona Hatch Johnson Mayer as AP 2000-3283 on May 24, 2000 in case no 92-39896 and 94-11705 on August 16, 2002, under 11 USC 106.

11. Whether respondent Harpley filed AP 2002-0655 after the statute of limitations found in 11 USC 546 had expired for exercising his official duties in the Florida Bankruptcy case 94-11705 of Ramona Hatch Johnson Mayer. Whether Harpley bothered to obtain an extension of up to one year after his time of one year expired from his first appointment in the Mayer case December 01, 1994; and whether debtor Mayer complied with Florida statute 726-101 to 112 which allowed her through 11 USC 544, one year from the date of discovery of a cause of action to file a complaint to recover the personal property which was June 6, 1999, or have the cause of action extinguished.

12. Whether the bankruptcy judge, Thomas E. Baynes abused his discretion in the evidentiary hearing on July 15, 2004 by prohibiting the testimony of Ramona Mayer, debtor/plaintiff because that testimony was beneficial to the

defendants/petitioners herein.

13. Whether respondent Harpley and his attorneys, Hicks, Levine, Genson, Mayer and attorney Lowry, Reed, Larry Alan Levick, and Peter Harrington for Equiserve Wal-Mart and others committed perjury, fraud, conspiracy to commit fraud, malicious and intentional interference with the petitioner's investment contract, by pursuing a falsely claimed interest in the 11, 792 shares of stock knowing from the inception that all the stock certificates were owned solely by petitioner Billy F. Hatch.

14. Whether the Bankruptcy Judge Thomas Elmer Baynes violated all the elements of the doctrine of judicial estoppel, since the party who is to benefit from this doctrine has to petition the court by motion for it to be used and did respondent Harpley meet any of the four required elements and was it instead the petitioners to whom Baynes was required to grant "Judicial Estoppel" due to the repeated misconduct of plaintiff Harpley and his attorneys and the Mayers and their attorneys as spelled out in the case of *National Loan Investors L.P. v. Taylor.*

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## OPINION AND ORDERS BELOW

Come now the appellants/defendants, Virginia D. Hatch and Billy F. Hatch, pro se, pursuant to Part III of the U.S. Supreme Court Rules and presents this Petition for Writ of Certiorari. The June 29, 2007 Memorandum Decision of the Eleventh Circuit United States Court of Appeals on Petition for Rehearing appears as Appendix A. The decision of the Eleventh Circuit United States Court of Appeals May 10, 2007 appears as Appendix B. The Judgment of the United States District Court, Middle District of Florida, Tampa Division in Civil Action 05-01580 CV-T-30-30TGW (94-11705-BK-KRM) dated January 23, 2006 appears as Appendix C. The Judgment and Finding of Fact and Conclusions of Law (29 pages) of the Bankruptcy Court appears in PACER electronic format as docket #119 and #120 entered on March 18, 2005 in AP 02-0655, Bankruptcy Court Middle District of Florida.

## JURISDICTION

The Memorandum Decision of the Eleventh Circuit United States Court of Appeals on Petition for Rehearing was entered on June 29, 2007. This petition for certiorari is being filed within 90 days of that date. Jurisdiction is invoked under 28 USC Sec 1254(1) and 1257.

## STATEMENT OF THE CASE

The genesis of this case began on June 3, 1998 when petitioner, defendant Virginia D. Hatch, a Certified Public Accountant by profession, was stopped on the interstate highway by the Texas Highway Patrol for an inoperative automobile tail light. All books, papers, currency and personal effects were seized by the troopers and the defendant /petitioner was jailed. Upon release of the defendant/petitioner, all items seized were retained by the Texas Highway Patrol and subsequently turned over to the U.S. Attorney who brought a criminal indictment for Bankruptcy fraud against petitioners Virginia D. Hatch and Billy F. Hatch. On March 5, 1999, all evidence which consisted of the items seized in the traffic stop and subsequent search of the petitioners residence was suppressed by the United States District Court for the Northern District of Texas and all criminal charges were dismissed and the petitioners were released from a six month pre trial confinement. The seized items containing records, currency and stock certificates registered in the names of the petitioners were turned over to the United States Bankruptcy Court for the Northern district of Texas. On May 24, 2000, the Florida panel trustee (respondent) filed AP 2000-3283 against the petitioners and on September 12, 2000 he filed a claim for $204,000. Both cases were dismissed and on April 10, 2002 the Bankruptcy Court ordered the stock certificates which are the subject of this case to be abandoned and returned

to the petitioners. The stock certificates were retained by the U.S. Panel Trustee and not returned to the petitioners as ordered by the court, instead Bankruptcy case 94-11705 was re-opened in the Middle District of Florida by the respondent in this case and adversary proceeding AP 02-0655, was filed on August 16, 2002 claiming that the stock certificates belonged to a bankruptcy estate being created by him in the Middle District of Florida. The Florida Bankruptcy Court ruled that the respondent/trustee and debtor in that case had only a one third interest if any and ordered the stock to be partitioned. That ruling was appealed to the United States District Court of Florida and was reversed and remanded on April 4, 2004 to the Bankruptcy Court for further proceedings. The Bankruptcy Court issued a finding of fact and conclusion of law and entered a judgment in favor of the respondent in this case and the appellants appealed on March 23, 2005 to the District Court.

## ARGUMENT FOR GRANT OF WRIT OF CERTIORARI

The United States Court of Appeals has entered a decision that is not only in conflict with the Eleventh Circuit but in conflict with the decisions of the other circuits of the United States Courts of Appeal on the same important matter concerning administration of Bankruptcy law and compliance with the provisions in the holding of *Northern Pipeline Co v. Marathon Pipeline Co.* 458. U. S. 50

(1982). The decision of the Eleventh Circuit in the present case conflicts with the Bankruptcy Reform Act and is runs counter to the intent of the U. S. Supreme Court in *Marathon*.

The decision in *Marathon* and the Statutory law enacted by Congress subsequent to that decision was supposed to put a stop to Bankruptcy Judges ruling on contract law. Statutes in 28 USC 157 created "Safeguards" for the public which were supposed to require the "Consent" of all parties to jurisdiction of the bankruptcy courts over them and their assets, and once and for all put a stop to the history of abuse of the public found in the case law of the bankruptcy courts. Petitioners believe that the U. S. Supreme Court needs to take another look at *Marathon* and that Congress needs to hold public hearings and see just how bad the abuse of process is because it is a federal crime under 18 USC 241 and 242 and exists across this country. The panel trustee program, 28 USC 581-589 needs to be cleaned up or abolished all together because its provisions are wide open to abuse and in its current condition and use is clearly unconstitutional.

Petitioners were the victims of two illegal seizures by the U. S. Attorney's office in Dallas, Texas, from an automobile stopped on Interstate 30 near Mt. Pleasant, Texas on June 03, 1998 and the subsequent "Raid and Plunder" of the residence at 2005 West 16th Street, Little Rock, Arkansas on September 30, 1998. These two illegal seizures were ruled as such on

February 25, 1999 when a motion to suppress all illegally seized property was issued by the U. S. District Court. Under the 5th Circuit Court of Appeals "precedent" *Pena v USA*, 122 F3d 3 (5th Cir 1997), and Criminal Rule 41( e ), all the illegally seized records and assets were " as a matter of law" to be returned immediately. Nine and one-half years later, the U. S. Attorney's office still has over half of the 55 containers of records minus the 26 that they finally returned on April 06, 2006, and still has all the assets, totaling $6,000,000.00.

In the 11th Circuit Court of Appeals order in this case issued on May 10, 2007, the court stated that 11 USC 546 did not even apply to the turnover in this adversarial proceeding because it was filed under 11 USC 542. The court cited no specific case law on page 6 of Exhibit B but the opinion expressed can be found in the case of *In Re Pugh*, 158 F.3d 330 (11th Cir. 1998) which was the exact argument propounded by the respondent panel trustee for the Middle district of Florida, Ralph Jay Harpley. On May 10, 2007, when the 11th Circuit wrote their opinion in this case, the opinion dated October 21, 1998, which backed the opinion of the three judge panel:

" However, the instant adversary proceeding sought turnover, partition, and sale pursuant to 11 USC 363, 542. The 546 limitation period is not applicable to such a proceeding. See 11 USC 546 ( a ). Thus, we find no merit to this argument."

The case of *In Re International Administrative Services Inc.* 408 F3d 689 (11th Circuit 2005) opinion issued on May 03, 2005, by 11th Circuit Court of Appeals Judges, Marcus, Fay and Siler (from the 6th Circuit, footnote page 694), ruled on pages 696 and 697 of *International*, that the panel trustee in that case who in

> "Count II" sought turnover under 11 USC 542, property improperly transferred from the Debtor, page 696~ "...Trustee's inability to timely identify ...and initiate any proceeding to avoid transfers within the limitation period which expired on June 20, 1998, two years after IAS filed for Bankruptcy."
>
> Page 697, "Count I of the complaint sought to avoid any transfer of an interest in the Debtor in property pursuant to 11 USC 544 ( b ) and Florida Statute 726.105.... which permit avoidance of Transfer"

The decision in *In Re Pugh*, was made by Judges Barkett, Dubina and Tjoflat writing the opinion. The opinion written in this case on May 10, 2007, Exhibit "B" was by Anderson, Birch and Barkett. Petitioners brought this discrepancy that the latter panel of three judges Anderson, Birch and Barkett were not following the latest 11th Circuit Court of Appeals opinion on the issue of whether or not 11 USC 546

controlled 542, which is what the Complaint claims to have jurisdiction under, and the judge panel went back to the attorneys for Trustee Ralph Jay Harpley, or Dennis Jay Levine allowing him another fourteen (14) days to file a response by August 20, 2007, and in spite of the fact that Mr. LeVine did not meet the deadline filing his response on August 21, 2007, and in the entire dozen or so pages, not once did he even mention the sections of the code in question, much less enlighten the Court or Petitioners as to how *Pugh* somehow overruled *International.* Nor did he provide the court or petitioners with any Bankruptcy Code Section, Rule or case law that superseded *International* thus reverting back to *Pugh.* Therefore, this is a very serious departure from honoring and showing respect to the opinion published by the panel of three judges who wrote *International.*

In the first place both Respondent and the Barkett Court at the 11th circuit are wrong, that 11 USC 542 is the correct code section to obtain turnover of the subject 11,792 shares of Wal-Mart Stock and all the accumulated dividends for 9 1/2 years. Since Ms. Diane G. Reed, Panel Trustee, Dallas, Texas, in Ms. Hatch's Bankruptcy case, did not obtain the "consent" of any party thus violating 28 USC 157( c ) (2 ) and she did not obtain the statutory extension to 11 USC 546 since her 139 days as the third trustee expired on February 10, 1999, before the criminal case ended on February 25, 1999, she was not a "legal custodian" of illegally seized property. The case of *In Re Sensitive*

*Care, Inc.* 239 B. R. 117 (Bkrtcy N. D. Tex August 30, 1999) was precedent for U. S. Bankruptcy Judge Harold C. Abramson and Federal district Court Judge Joe Kendall to have followed, if they intended to legally transfer the Hatch records and $6,000,000.00 in combined Hatch assets from the criminal court to the Bankruptcy Court on February 18, 1999. In *Sensitive*, there was a "legal custodian" and the Bankruptcy court of Steven A. Felsenthal allowed the trustee in that case to seek "turnover of funds in possession of state "custodians," and it was properly done using 11USC 543. There was $7,000,000.00 in property in that case.

In this particular case, however, the panel trustee Diane G. Reed and the U. S. Trustee William T. Neary, did not follow the code, the Bankruptcy Rules, the case law, but simply re-seized the illegal seizures, and that is nothing more than a third illegal seizure and thus the third 4th Amendment violation since the precedent *Pena v. USA* was not followed by Judge Joe Kendall and Judge Harold C. Abramson on February 25, 1999. There is also a "split of authority" in the return of illegally seized property under Criminal Rule 41 ( e ) see separate issue. The controlling law for the return of the Hatch property is found in *Bradley v. St. Louis Terminal* Warehouse *Co.* 189 F2d 818, (8th Cir. 1951). UST William T. Nearly was "exparte" all over the Hatch criminal case, seizing all the property and records, and continued illegal retention of all the assets and records now for 9 ½ years, in spite of the criminal case

being dismissed without prosecution on February 25, 1999, with the sole purpose of his steady and continued involvement being the protection of himself and 122 other local, state and federal defendants who made the two initial illegal seizures and detaining the petitioners in "county jails" for 151 and 190 days "detained" without being convicted of even a misdemeanor. *Bradley* clearly states,

> "Headnote 15
> A trustee in bankruptcy cannot obtain possession of property held adversely by wrongful seizure of it and acquires no jurisdiction over property or its proceeds by possession so acquired."
>
> "Headnote 16
> ....property was seized in exparte proceedings instituted by trustee, and there was no hearing nor pretense of hearing...so that bankruptcy court never acquired jurisdiction of the property, and property was sold.. warehouseman could sue in district court to recover proceeds of sale without permission of bankruptcy court."
> "Discussion of head notes 13-15 page 835....but after notice of its claim adverse and its refusal to submit to jurisdiction of the bankruptcy court. A judgment obtained without due process is a nullity"

Therefore, all the property and assets taken from petitioners automobile on June 03, 1998 and from her residence on September 30, 1998, had to be returned immediately on February 25, 1999, but is still being illegally held. The Florida case AP 2002-0655, is an "outgrowth" or a related case because 11,792 shares of petitioner Billy F. Hatch's stock was in the automobile when the seizure was made. Mr. Hatch has proven by a series of affidavits over the 9 ½ years, that he was a total stranger to the Florida Mayer bankruptcy case as well as the Texas case of petitioner Virginia Hatch, yet he and his assets were gathered up anyway, and the Bankruptcy judges in both states have resolved that petitioner Billy F. Hatch will never escape the two bankruptcy courts with his assets or records intact. After the criminal case was over, in order for the courts to continue to hold the petitioners and their assets prisoner, the U. S. Attorney in Dallas, Texas, would have to have complied with the case law for re-seizure, *The Brig Ann, McLain Master*, pages 289, 290, 291, February Term 1815. In that case, once a seizure is released, is voluntary abandoned and release of the property is made, the legal effect of the original seizure is purged away and with it goes all prior rights acquired by the seizure. The state of Texas, did not follow proper seizure procedures when the original stop was made, as spelled out under *$4,181 In U. S. Currency v. State*, 944 S. W. 2d 24 (Tex.AppTx.Ark. 1997) and *State v. $2,000,000.00 (Bazan)* 822 S.W.2d 721 (Tex.App.Houston, 1st Dist 1991). Likewise, the U. S.

Attorney's office in Dallas, Texas did not follow the holding in *Calabro v. USA*, 830 F.Supp 175 (ED NY 1993) , *USA v. Peace*, 331 F3d. 809 (11th Cir. 2003) or *Concepcion v. USA*, 298 F. Supp 2d 351 (ED NY 2004).

The Florida case grew out of the same set of facts and circumstances as the original illegal transfer of the petitioners assets and records from the criminal case to the bankruptcy case, in spite of the violation of all the "Consent Safeguards" enacted by Congress such as Bond for The Trustee, 11 USC 322. Neither panel trustee ever qualified in the statutory five ( 5 ) days from the date of their appointment by obtaining bond to protect those they could harm. Likewise, there were no consents obtained under 28 USC157 (c ) ( 2 ) or before the stock was sold both in Dallas, Texas and in Tampa, Florida on the New York Stock Exchange under 11 USC 363 ( f ) ( 2 ) without the petitioner's knowledge at the date of sale, much less their written consent which was required before the sales could be made. In addition, to the above, there was a dispute at all times between petitioner Virginia Hatch and the Internal Revenue Service as to whether or not she ever owed them anything. Judge Harold C. Abramson granted Ms. Hatch's summary judgment in AP 1993-3592 on May 29, 1994, against IRS, and discharge order of October 05, 1993, have simply been ignored by all the lawyers and all the judges for the last 9 ½ years, in spite of their Res Judicata Effect. In fact, the case of *In Re National Audit Defense Network*, 322 BR 896 (Bkrtcy D.

Nevada 2005) specifically provides that when there is a "dispute", that there can not be any distribution from the estate. In Petitioner's case, the bankruptcy estates that have been created both in Dallas, Texas, and Tampa, Florida, do not legally exist. They are the result of simple "Taking", and then refusal to return, refusal to plead, just total silence, stonewalling, while they spend the proceeds in Texas and Florida paying themselves the trustees and their "professionals" the entire balance in fees. These two bankruptcy courts do not have any jurisdiction whatsoever, because all questions as to whether Ramona Hatch Johnson Mayer owns a one-third ( 1/3 ) or 100% or zero vested interest is not a bankruptcy issue (another abuse of *Marathon)*, but is a state court issue, decided by the U. S. Supreme court many years ago in *Butner v. USA*, 440 US 48, 99 S,Ct. 914, 59 Led2d 136, (4th Cir. 02-21-1979).

There is a split of authority among the circuits as to whether claims are against the estate (assuming that it is a legal estate) or the estate and the debtor. The case of *In Re Pickett*, 363 B. R. 794 (Bkrtcy S, D, Texas, Houston Div. February 12, 2007) as spelled out on pages 796 and 797 whether liens (in petitioner Virginia Hatch's case old liens from 1978 which were settled long ago, lapsed, or as in the case of IRS audit of 1982, 1983, 1984 were never owed, but which resolution was granted to Virginia Hatch in AP 1993-3592 May 29, 1994) "must relate only to property of the estate or can also relate to property or the

debtor." Again the "split of authority" grows out of different opinions as to how to interpret 28 USC 157 which just proves again that there are lawyers and judges in this country who are determined to kill *Marathon,* and all that it stands for. In this particular case, there is another case that is on point, because Trustee Ralph Jay Harpley and the daughter of the petitioners have "interloped into and out of petitioner Virginia Hatch's bankruptcy case now for the 6th time in 9 ½ years. *In Re Mugica* 362 BR. *782* (Bkrtcy S.D. Texas February 07, 2007) Headnote 8, states that claims must affect the estate not just the debtor.

First, UST William T. Neary violating *Bradley* and all the safeguards and consents in 28 USC 157 (c) (2), but he and the Abramson and Harlin D. Hale courts have allowed both Mayer and Harpley to become parties now for the 6th time, and as if to "renounce" their claim to the partition sale of their alleged one-third 1/3, they are now back in Texas claiming 100% of the 11,792 shares as well as all 100% of petitioner Virginia Hatch's surplus funds. What this amounts to is two parties in off the street, agreeing that they think they have an interest in the debtor's property and then just filing a claim and "Taking it".

The case of *Wolinsky v. Oak Tree Imaging, LP,* 362 BR 770, (S.D. Tex. February 09, 2007) deals with this very issue in head note 17, on page 772, and discussion on 784.

"17 Bankruptcy 2041.1 Role of the Bankruptcy courts is not to adjudicate two party disputes."

Ramona Hatch Johnson Mayer has filed the 6th adversary proceeding or claim to the 11,792 shares of stock and all accumulated dividends unpaid now for 9 ½ years, even though in Tampa, Florida, she is claiming through a "partition suit" that her part was only a one third. *Id* at 784

> "...substance of the suit was based entirely on state law, and while a final judgment in debtor's favor may have created additional funds for the estate, the suit involved neither a right to bankruptcy nor did it arise strictly in a bankruptcy context. 28 USC 157" .

This is precisely what is on-going in Dallas, Texas, again on this very day. Judge Harold C. Abramson, who presided over the first five (5) years of petitioner Virginia Hatch's bankruptcy case until he retired in April 2003, and Judge Harlin Dewayne "Cooter" Hale (Judge Hale is widely know in the legal community affectionately as "Cooter") took the case. Judge Abramson published the case of *In Re Satelco Inc*, 58 BR 781 (Bkrtcy N. D. Tex March 13, 1986), in which he spells out precisely how as a result of *Northern Pipeline v Marathon*, page 783, that there is a "split of authority" in 1986 so soon after the new

laws July 10, 1984. Abramson spelled out that consent of all parties was necessary and then did not follow his own opinion when it came to Ms. Hatch's case. But it is "precedent" for the Northern District of of Texas" to follow.

This split of authority, or more nearly just blatant abuse of process which is a crime under 18 USC 241 and 242, is taking on a new life in the petitioner's case in Texas and Florida. Not only are the lawyers and judges creating estates where they do not exist, but they are interfering with the right to a jury trial, which would take the party out of bankruptcy court, if they do not want an Article I Judge presiding over the jury trial, but getting a withdrawal of the reference out of the bankruptcy court is closer to impossible than the average citizen can comprehend. The case of *In Re Art and Co Inc.* 185 B. R. 654 (D. Mass 1995) deals with this issue. There is something clearly unconstitutional about the ruling in this case, and it needs the attention of the U. S. Supreme Court now as well as the immediate attention of Congress, because, even without the effect that it is having and has had on the petitioners and their assets now for 9 ½ years, this smacks of inherent over-reaching by the bankruptcy judges and article III judges.

> Held: "The District Court, Tauro, chief judge, held that (1) jury demand made in adversary proceeding may not be withdrawn without the "consent" of all parties, and ( 2 )

courts may borrow from Federal
Rule 38 concerning jury trials
to determine appropriate timing
for jury demand in bankruptcy."

The only result that can be drawn from that absurdity is that such is absurd. Since when do the citizens of this country have to ask permission of each and every party that they may have the misfortune of coming up against in the bankruptcy of their opponent or their own bankruptcy of having to go with their "Hat in their hand and obtain the individual express permission of no telling how many adverse parties, if they can have a jury trial under an article III judge"? Is that destroying the U. S. Constitution, without trying or what? That very thing is at the moment occurring in petitioner's case in Dallas, Texas, under the supervision of Judge Hale, "Cooter" as he is affectionately called by the legal community, has been caught in the process of discriminating against not only petitioner Virginia Hatch but petitioner Billy F. Hatch and all of his considerable assets now for 4 ½ years. Mr. Hatch has never filed bankruptcy in Texas or Florida and is a total stranger to both the Mayer Case in Florida and Petitioner Virginia Hatchs' case in Texas. Judge Hale published an opinion in the case of *In Re Avado Brans, Inc.* 358 B. R. 868, (Bkrtcy N.D. Tex) on December 28, 2006, and the crucial page is 877 where the opinion discusses "Post - confirmation jurisdiction" and at the

time this opinion was published, the docket sheets clearly indicate that all the defendants who are from the state of Georgia (per docket entry number 263) were still in the process of answering the complaint in AP-05-03823, which it appears was filed outside the one year statutory period under 11 USC 546, as amended on October 22, 1994. There is no statement as to how the Georgia defendants ended up in a Texas Bankruptcy Court, but that is not what is important about this case to the petitioners or to this Court. What is important is that on pages 877, 878, and 879, Judge Hale, goes into great detail and cites cases that uphold the argument that the Hatches have been making in his court and the court in this case in Tampa, Florida, for 9 ½ years now and that is that "consent" had to be obtained by Federal District Court Judge Joe Kendall and U. S. Bankruptcy Court Judge Harold C. Abramson, on or before February 25, 1999, when the criminal case ended. Judge Kendall granted the Hatch's motion to suppress the illegally seized evidence from any and all future use, the petitioners were ordered released, and the criminal case was dismissed and over. In an order dated April 25, 27, 2007, Judge Hale admitted that the "The Hatches (the petitioners herein) won their criminal case", but.

Bankruptcy Judge Hale cites the cases of *In Re Doctor's Hospital*, 351 B.R. 813, 835 and *Veldekens v. GE HFS Holdings Inc.* 362 B. R. 762 (S. D. Tex, Houston, Tex January 23, 2007) and those are the first and only case that the petitioners have been able to

find where a district judge (Gilmore) actually required any party to file the proper but very simple motions to consent to jurisdiction in the bankruptcy court. The treatment the Hatches and the Veldekens have received proves that once a party is in such court, it is impossible to escape. In fact the bankruptcy judge scolded the Veldekens who had $7,000,000.00 in real estate at risk and they had guaranteed another $7,000,000,.00 in loans which was at risk, but when they suddenly changed their minds and no longer wanted to risk $14,000,000.00 in an Article I court, they were chastised and derided. However, as luck would have it, the district court held that they could indeed withdraw the reference and that they could have a jury trial in the federal district court under an Article III judge, in 362 BR 762 page 762. This is another example of "split of authority" on the interpretation and abuse that is on-going in 28 USC 157. With full knowledge of the illegal acts that have been occurring in the Tampa, Florida court, since August 16, 2002, in total defiance of the April 10, 2002 order of Bankruptcy Judge Harold Calhoun Abramson, who ordered the 11,792 shares of Wal-Mart stock abandoned and returned to petitioner, they went out of state without complying with *Wolf Designs v. Donald McCoy Ltd.* 355 F. Supp 2d 848 to 853 (N.D. Tex Jan 31, 2005, opinion of Federal District Judge A. Joe Fish and Magistrate Judge Paul D. Stickney), which spells out step by step what the Florida federal district court and bankruptcy court had to do to legally get the Mayer/Harpley case transferred from Texas to

Florida, and none of the required steps were ever taken; they simply found Dennis Jay Levine, Florida collection lawyer and automobile repossessor extraordinarous , and filed AP (2002-0655) and the rest is history, but the arguments have been ongoing now since August 16, 2002. On November 06, 2006, in the transcript from the court reported hearing Lawyer Dennis Levine stood up in a hearing to which the petitioners were denied attendance by telephone conference by Judge Catherine The Great McPeek MeEwen and stated twice on page 25 of the transcript that "Everybody had known since the inception that Ms. Mayer the petitioner's daughter had always had a joint tenancy, which was unvested survivorship. For the interest to vest, petitioner had to have died. Yet, petitioner Virginia D. Hatch has been criminalized by all the lawyers and all the judges both in Texas and Florida claiming that she violated the law when she did not declare her "survivorship only interest" in petitioner Billy F Hatch's stock when she filed bankruptcy November 10, 1992, which was clearly 15 years ago, and petitioner is still not dead. Clearly, these cases are "non-cases, they are lawyer cases. See issue on unconstitutionality of 28 USC 581-589. (*Love and Arnold)* As far as for Judge Harlin "Cooter" Hale, he is clearly guilty of encouraging the litigation in Florida and in fact knowing that Mayer and Harpley claimed only a one-third interest in Florida, actually went so far as to order that the Quillen Law Firm in Dallas, Texas file a declaratory judgment on May 14, 2007, and created a fake dispute in case 92-29896 over the $157,938.20 in surplus funds

belonging to petitioner Virginia Hatch in her so called estate that panel trustee Dianne Reed created out of whole cloth now for 9 ½ years, and for the 5,896 shares of stock that has always belonged only to petitioner Billy F. Hatch and stating that the stock and all his Arkansas real estate would be sold to pay the alleged debts of petitioner Virginia D. Hatch. But petitioner had no debts, never owed the IRS anything; as a former IRS agent, she proved repeatedly that the audit of her 1982, 1983 and 1984 returns was a total farce; the SBA loan was settled by petitioner paying SBA $25,000 and the PFCU debt lapsed in 1989, long before petitioner filed bankruptcy on November 10, 1992. Bankruptcy Judge Hale knows all these facts; he has had the case since April 2003, when Judge Abramson retired; that was 4 ½ years ago.

All Judge Hale had to do was review the Docket Sheets to see that there were no "simple motions" filed by petitioners consenting to jurisdiction, subject matter jurisdiction, that the petitioners and the other parties Wal-Mart and Charles Schwab, had never been even asked to consent to jurisdiction by the bankruptcy court. Examples of the simpleton motions that UST William T. Neary "failed to obtain" from Virginia D. Hatch, the debtor in Case No. 92-39896 in Dallas, TX; from Billy F. Hatch (petitioner) and from Walmart stores Inc. and from Charles Schwab Inc., are shown at Appendix "E1" and "E2" for the simpleton motion and "E3" for the court order for each party to have complied with the "express

written consent" to subject matter jurisdiction under 28 USC 157 ( c ) (2). Judge Hale has removed all question that he knew and had known now for 4 ½ years that he has been denying the petitioners all due process. Likewise, he knows about the "consent" of petitioner Virginia D. Hatch being required before the 24,000 shares of Wal-Mart stock which has either been sold or simply disappeared off the face of the earth that belonged to petitioner; or under 11USC 363 ( f )(2) is nowhere to be found in the docket sheets, nor is there an extension of time as required under 11 USC 546 (a). There was no extension agreed to by all the parties under 11 USC 546 ( a ) for trustee Harpley in Tampa, Florida; therefore, both trustees have been operating without any bond as required under 11 USC 322, without any of the safeguard consents that congress clearly provided for the public's benefit, after July 10, 1984 and which is just simply being ignored or abused, and that is not a harmless error, as spelled out in *In re Maurer*, 271 BR 207(Bkrtcy MD Florida 2002 ).

Each and every act that has been committed against the petitioners and their assets and all their vital records for 9 ½ years, is a violation of 11 USC 523, 524, 525, and 727 and put the petitioners into 11 USC 303 involuntary bankruptcy without any of the benefits for 9 ½ years and they are told they have no standing to defend. The case of *In re Gervin*, 337 BR 854 (Bkrtcy W.D. Tex 2005) held IRS for violating the debtor's discharge with punitive damages and the

Gervins suffering was absolutely nothing to compare with what the petitioners have been forced to endure for the past 9 ½ years.

Judge Harlin Dewayne "Cooter" Hale had the original Wal-Mart stock certificates in his possession, in the court registry, and the petitioners have repeatedly explained to him that all he has to do is turn the real certificates over and look on the back side for a definition of what joint tenant means to Wal-Mart and should mean to Equiserve Inc. the registered agent for Wal-Mart. It means survivorship only, not tenants in common, which would be an equal 1/3 interest, which could actually be partitioned. Clearly he has another agenda, and it is not following precedent. Now he is ordering that Mayer sue in Dallas, Texas, AP 2007-03160, filed May 14, 2007, for 100% ownership of the 11,792 shares and petitioner Virginia D. Hatch's 24,000 shares that have been illegally sold or taken when there was no one to pay except panel trustee Dianne Reed and her professional partners. The accumulated dividends at 88 cents per share for 9 ½ years amounts to $299,221.12 that would then be paid by Equiserve to Peter Harrington and the gang of lawyers and judges. The receipt of that income would be tax free under the current capital gains tax structure. Eleventh Circuit Court Judge Rosemary Barkett apparently can see nothing wrong with the manner in which the petitioners and their assets have and are still after 9 ½ years being treated. She and clerk Brown at the Eleventh Circuit have stood in the

way of the petitioners being heard, illegally dismissing their appeal, and then delay after delay, short deadlines, all of which the docket sheets clearly prove, non acceptance of the "new evidence" that the petitioners attempted to present to the court and even went to the point of telling them to stop filing motions and new evidence, knowing that such motions were the only means by which the petitioners could bring new evidence that would have been dispositive if only they would take time to look at it. This case should have been over April 14, 2006.

What exists both in Texas and Florida as to jurisdiction is explained in the case of *American Fire Cas. Co. v. Finn* 341 US 6 from the 5th Circuit April 9, 1951, Footnotes 14, 15, and 16,

> "mere consent of two parties (who are not parties to the bankruptcy such as petitioner Billy F Hatch who is not a party but whom his daughter Mayer is suing him in petitioner Virginia Hatch's bankruptcy case and Mayer is also not a party to Ms Hatch's bankruptcy case, and if they agreed to consent to jurisdiction) does not grant jurisdiction upon a court which would not possess it without consent."

Mayer and Harpley agreed to sue the petitioners in the Mayer's Florida's bankruptcy case and now Mayer and a whole set of new lawyers in

Dallas, have agreed to sue the petitioners again, in Texas and this is the 6th suit over the very same 11,792 shares of stock that was involved in AP 2000-3283 and the claim of Harpley filed in case no. 92-39896 on September 12, 2000 for $204,000. Likewise, the trustee and the court can not write and approve a plan creating jurisdiction where it does not exist as is spelled out in *In Re Loya*, 358 BR 888 (Bkrtcy W. D. Tex El Paso, September 18, 2006).

An important issue that should be addressed by the U.S. Supreme Court is that statute 28 USC 581-589 is unconstitutional as written and as being administered by the courts and the U. S. Attorneys in America and by the U. S. Trustees. It encourages abuse of process which is a crime under 18 USC 241 and 242.

The cases of *In Re Howard Love Pipeline Supply Co.*, 253 BR 781, 786 ( Bkrtcy E. D. Tex, October 19, 2000) and *In Re Arnold*, 176 BR 13 (Bkrtcy E. D. Tex, 1995) both clearly spell out that a case cannot be reopened or garnered in any manner if the sole purpose of such action is to generate professional fees for the panel trustee and for the professional attorneys, accountants, auctioneers, ect. that the panel trustee can hire to administer the estate. That is all the reopening of petitioner Virginia D. Hatch's bankruptcy case 92-39896 in the Northern District of Texas and remaining open for 9 ½ years and the reopening of closed case 94-11705 in the Middle District of Florida is about. The driving

force for reopening these cases was to generate fees and more fees. The panel trustees and their so called lawyers conducted themselves like the looters did in downtown New Orleans department stores in the aftermath of hurricane Katrina. The most significant driving force in this action is the contingency fee arrangement that the panel trustees are allowed to make with their lawyers. This arrangement creates a ruthless method of operation and can be likened to a feeding frenzy by sharks. If the panel trustee and their lawyer were on a fixed salary, none of this would happen. The stock in Florida sold for $215,000.00 to pay a mere $5,000.00 in creditors, and to date Panel Trustee Harpley has claimed almost $30,000.00 in fees and his lawyer, Levine is up to 105,000.00 plus a $20,000.00 bonus the last count on the 4th request for compenstation. Dennis Levine has filed more papers to be paid since the final order March 18, 2005, than he did in all the proceeding before that, almost 100 papers to be paid, while the case is on appeal.

Likewise in Texas, where panel trustee lawyer Larry Alan Levick paid himself on a contingency basis of 1/3 of $1,300,000.00 and all he ever filed in the case were 36 pages of simpleton motions. When the final reports were filed by UST William T. Neary, it was discovered that a secretary and paraprofesssional, Marva Bull, to panel trustee Dianne Reed, prepared and filed those 36 pages. Levick charged $342,451.66 for doing absolutely nothing for 9 ½ years and Bankruptcy Judge Harlin

Dewayne "Cooter" Hale approved all fees without one page of *Lodestar*. Clearly there are all sorts of professionals that the bankruptcy court could hire to do these jobs, for a lot less money and get a better job. Lawyer Levick is totally unqualified to handle any kind of financial matters. His education consists only of a BA degree in Hebrew from Tulane University and then he sat through and "survived" law school. He admitted to the court that he was "no finance major," knew little or nothing about income tax, net operation loses and the like, but that he was fully qualified to administer the $6,000,000.00 estate of petitioners. Go figure! This program is corrupt, open to abuse, and the U. S. Supreme Court should do to it what they did to the 1978 bankruptcy code, repeal the whole thing and start over. Thanks for *Marathon*. Please revisit it again.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Virginia D Hatch

Billy F. Hatch

Petitioners, Pro Se
PO Box 23318
Little Rock,AR. 72211
(501)-376-0524

APPENDIX A1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-10620

IN RE:

VINCENT J. MAYER,
RAMONA S. MAYER — Debtors

---

VIRGINIA D. HATCH,
BILLY F. HATCH,

Plaintiffs-Appellants,

Versus

RALPH J. HARPLEY,

Defendant-Appellee

APPENDIX A 2

---

Appeal from the United States District Court for the Middle District of Florida

---

BEFORE: ANDERSON, BIRCH AND BARKETT, Circuit Judges

PER CURIAM:

The petition(s) for rehearing filed by appellants is DENIED.

ENTERED FOR THE COURT:

/s/ Rosemary Barkett

UNITED STATES CIRCUIT JUDGE

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT. JUNE 29, 2007
THOMAS K. KANE, CLERK

APPENDIX B1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 06-10620
Non-Argument Calendar

---

D. C. Docket Nos.
05-01580-CV-T-30-TGW
94-11705-BK-KRM

IN RE:
VINCENT J. MAYER,
RAMONA S. MAYER,
Debtors.

---

VIRGINIA D. HATCH,
BILLY F. HATCH,

Plaintiffs-Appellants,

Versus

RALPH J. HARPLEY,

Defendant-Appellee

---

Appeal from the United States District Court
For the Middle District of Florida

---

APPENDIX B2

(May 10, 2007)

Before ANDERSON, BIRCH and BARKETT, Circuitt Judges.

PER CURIAM:

Virginia D. Hatch and Billy F. Hatch (collectively the Hatches') proceedingg pro se, appeal the district court's affirmance of the bankruptcy court's determination that debtor Ramona Mayer, the Hatches' daughter, shared with them a legal interest in 11,792 shares of Wal-Mart stock. Appellee Ralph Harpley ( the trustee ) is the Trustee of Mayer's bankruptcy estate, and was the named plaintiff before the bankruptcy court in an adversary proceeding brough regarding the ownership of the stock.

The stock certificates in question listed both the Hatches and Mayer, creating a rebuttable presumption under state law that an interest in the stock, which had been purchased by the Hatches, had been gifted to Mayer. The Hatches argued that Mayer's name had only been listed on the stock certificates as a survivorship interest. After an evidentiary hearing, the bankruptcy court found the Hatchs non-credible and determined that they had not overcome the presumtion that a gift had occurred. Accordingly, the bankruptcy court ordered the stock to be partitioned and one-third of the stock to be turned over to the Trutee.

We address two initial matters before reaching

the Hatches' arguments on appeal. First, the Trustee argues that the instant appeal should be dismissed as moot because the Hatches did not obtain a stay of sale and Mayer's interest in the Wal-Mart stock was subsequently sold. The Trustee is correct that we are Powerless to order the recision of this sale. *In re Sewanee Land, Coal & Cattle Inc.*, 735 F.2d 1294, 1295 (11th Cir. 1984). However, the bankruptcy court did grant a stay on any distribution of the post-tax proceeds of the sale, and the Hatches could still obtain relief as to those proceeds. See *Markstein v. Massey Associated, Ltd., 763 F.2d 1325 ( 11th Cir. 1985).* Accordingly this appeal is not moot.

Second, we must determine which issues raised by the Hatches are properly before us. "Bankruptcy Rule 8006 direct an appellant to file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. An issue that is not listed pursuant to this rule and is not inferable from the issues that are listed is deemed waived and will not be considered on appeal." *In re: Freeman*, 965 F2d 252m 255 (11th Cir. 1992). "A federal appellate court will not, as a general rule, consider an issue that is raised for the first time on appeal. The corollary of this rule is that, if a party hopes to reserve a claim, argument, theory, or defense for appeal, she must first clearly present it to the district court, that is, in such a way as to afford the district court an opportunity to recognize and rule on it." *In re; Pan Am World Airways*, 905 F.2d 1457-62(11th Cir. 1990) (internal

footnote omitted). An argument not raised oin an initial brief is deemed abandoned. *Mendoza v. United States Atty. Gen.*, 327 F.3d 1283, 1286 n.3 (11th Cir. 2003).

Therefore, the only issues before us are those that were noted by the Hatches in the bankruptcy court, raised on appeal before the district court, and argued in their initial brief before this Court. Three issues raised by the Hatches meet these criteria; whether the Hatches were entitled to an involuntary dismissal of the Trustee's complaint, whether the complaint was brought outside the 11 U.S.C. 546 statute of limitations, and whether the bankruptcy court abused its discretion in declining to apply the "adverse witness rule."

"As the second court of review of a bankruptcy court's judgmnet, we independently examine the factual and legal determinations of the bankruptcy court and employ the same standards of review as the district court. As the district court made no factual findings in its function as an appellate court, our review is de novo. We review the findings of fact made by the bankruptcy court for clear error. A factual finding is not clearly erroneous unless this court, after reviewing all of the evidence, [is] left with the definite and firm conviction that a mistake has been committed. This Court conducts a de novo review of determinations of law, whether from the bankruptcy court or the district court." *IBT Int'l Inc. v. Northern (In re: Int's Admin. Servs.)*, 408 F.3d

689,698 ( 11th Cir. 2005) ( internal citationsa and quotation marks omitted: editing marks in original).

The Hatches first argue on appeal that the bankruptcy court erred in denying their adversary proceeding motion for default judgment, which, because the Hatches were defendants, we construe as a motion for involuntary dismissal for failure to prosecute and comply with the bankruptcy court's orders and procedural rules. We review the denial of a motion for involuntary dismissal for an abuse of discretion. See *Gratton v Great Am. Communs.*, 178 F.3d 1371, 1374 ( 11th Cir 1999).

Under Federal Rule of Civil Procedure 41 (h), which is generall applicable in bankruptcy adversary proceedings, see Fed. R. Bank. Pro. 7041, a defendant may move for the involuntary dismissal of a complaint for the "failure of the plaintiff to prosecute or to comply with these rules or any order of court." Fed/R.Civ.Pro.41(b). dismissal of a claim under Rule 41(h) is a sanction of last resort, applicable only in extreme circumstances. *Goforth v. Owens*, 766 F. 2d 1533, 1535 (11th Cir. 1986).

Here, the Hatches' motion alleged only that the Trustee had failed to file responses to each of the Hatches' numerous pleadings, Further, the Hatches did not file their motion until after the bankruptcy court had already granted the Trustee judgment on the merits. We find that the bankruptcy court did not abuse its discretion in denying this motion.

The Hatches also argue that the adversary proceeding to partition and turnover the Wal-Mart stock was brought outside of the 11 U.S.C. 546 statute of Limitations. However, that section is inapplicable to the proceeding at issue. Section 546 (a) of Title 11 provides for a Limitations period on actions or proceedings brought pursuant to 11 U.S.C. 544, 545, 547, 553. 11 U.S.C. 546(a). However, the instant adversary proceeding sought turnovr, partition, and sale pursuant to 11 U.S.C. 363,542. The 546 limitations period is not applicable to such a proceeding. See 11 U.S.C. 546(a). Thus we find no merit to this argument.

Finally, the Hatches argue that the bankruptcy court abused its discretion in failing to invoke the adverse witness rule in their favor as a result of the Trustee's failure to call Mayer during the July 15, 2004 evidentiary hearing on whether the Hatches could overcome the presumption of a gift. We construe the Hatches' argument to be invoking the "missing witness inference."

"If a party has it peculiary within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable." *Jones v. Otis Elevator Co.*, 861 F.2d 655,658-59 (11th Cir. 1988) (quoting *Graves v. United States*, 150 U.S. 118, 121 (1893)). Footnote 1

In this case, the bankruptcy court did not abuse its discretion in declining to apply the missing witness inference. At the evidentiary hearing, the Hatches bore the burden of proof, and the hearing was suspended at the close of their presentation of evidence to allow the parties to brief the Trustee's motion for directed verdict. As the Trustee never had the opportunity to present his case-in-chief, he never had an opportunity to call Mayer as a witness, and the missing witness inference was inapplicable.

After careful consideration of the briefs of the parties, and thorough review of the record, we find no reversible error. Accordingly, the district court's affirmance of the bankruptcy court is, likewise."

AFFIRMED.

Footnote 1-The value of the missing witness inference has been called into questin as the Federal Rules of Civil Procedure have envolved to allow a party to attack the credibility of its own witness. See *Jones*. 861 F.2d at 659 n.4.

APPENDIX C1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

VIRGINIA D. HATCH and
BILLY F. Hatch,

Appellants,

v. Case No. 8:05-cv-1580-T-30TGW

RALPH J. HARPLEY,

Appellee.

----------/

AMENDED ORDER

This cause comes befor the Court upon Appellant' intitial brief (Dkt.# 18), Allellee's answer brief (Dkt. #20) and Appellant's reply brief (Dkt. # 27). The Court, having considered the briefs and the record, and being otherwise fully advised, finds that the underlying Bankruptcy Court's finding should be affirmed. No legal error was committed by the Bankruptcy given its findings of fact.

It is therefore ORDERED AND ADJUDGED that:

APPENDIX C2

1. The Bankruptcy Court's findings of Fact and Conclusions of Law and final Judgments in Favor of Plaintiff are hereby AFFIRMED.

2. The Clerk is directed to terminate any pending motions alnd close this file.

DONE and ORDERED in Tampa, Florida on January 23, 2006.

/s/JAMES S MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

APPENDIX D1

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 25, 2007 /s/Harlin DeWayne Hale
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHER DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

VIRGINIA D. HATCH case No. 2-39896 HDH-7

ORDER DENYING DEBTOR AND MR. HATCH'S MOTION TO RECONSIDER

Virginia D. Hatch ("Debtor") and Billy F. Hatch filed a motion to reconsider (DE #256) this Court's March 27, 2007, orders (DE #249, 250 and 251) (the "Orders"), which denied motion to compel production of records (DE#200), motion to reconsider final report(DE#211) and motion to reconsider a prior order. The motion is not timely, filed 20 days after entry. In addition, the court notes that the movants have failed to appear in any hearing and offer evidence to support their position. The motion is largely a personal attack on the U.S. Trustee and the professionals involved in this bankruptcy case and is

based, primarily, upon a misunderstanding by the movants that because they were successful in a criminal case, the stock seized and administered by the Chapter 7 Trustee is not property of the estate to be administered for the benefit of creditors. The criminal action is one proceeding, the bankruptcy case another.

It is therefore ORDERED that Debtor and Mr. Hatch's motion to reconsider, filed April 16, 2007, is DENIED.

END OF ORDER

APPENDIX E1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
Entered Oct 19, 2005, Clerk of the Court (Stamp)

CHARLES R. VELDEKENS, et al.,
Plaintiffs, Civil Action No. 05-3381

v.

GE HFS HOLDINGS, INC., et al.,

ORDER

This court, having considered the Agreed Motion fo. Referral to Bankruptcy Court and the papers on file, finds that the Motion is meritorious and should be granted. It is therefore.

ORDERED that this action is referred forthwith to the U.S. Bankruptcy Court for the Southern District of Texas, Houston division (Bohm,J.)(the "Bankruptcy Court"), in which Cause No. 05-35291-H4-11, styled *In Re Doctors Hospital 1997,L.P.* is pending and,

ORDERED that, pursuant to 28 USC 157, and based on the consent of the parties, the Bankruptcy Court may hear and determine this action, and may enter appropriated final orders or judgment.

Done in Houston, Texas this 18th day of Oct 2005
s/s VANESSA D. GILMORE,
UNITED STATES DISTRICT JUDGE

E2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Charles R. Veldekens, et al,
Plaintiff Civil Action No. 05-3381

v.

GE HFS Holdings, Inc., et al.,
Defendants

AGREED MOTION FOR REFERRAL TO BANKRUPTCY COURT

Plaintiffs Charles R. Veldekens, and Tidwell Properties, Inc. ("Plaintiffs") and defendant GE HFS Holdings, Inc. (GE HFS), formerly know as Heller Healthcare Finance II, Inc., jointly move the Court to refer this case to the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division.

1. Plaintiffs filed suit in state court on August 19, 2005. On September 6, GE HFS was served with the original petition. It timely removed the case on September 30 and timely responded to the petition on October 7. Both parties now move the Court to refer this case to the Bankruptcy court, which is familiar with the dispute at issue.

2. Currently pending before the U.S. Bankruptcy Court for the Southern district of Texas, Houston Division (Bohm, J.) (the Bankruptcy Court) is a chapter 11 bankruptcy, Cause No. 05-35291-H4-11, styled *In re Doctors Hospital 1977, L.P.* Doctors Hospital 1997, L.P. is the lessee of the real property which is the subject of this case. Further, already

pending in Bankruptcy court is Adversary Proceeding No. 05-3315, in which the Plaintiffs assert claims similar to the ones Plaintiffs brought in this matter. The parties agree that the Bankruptcy Court is the appropriate forum to resolve the parties' dispute.

3. The parties agree that the Bankruptcy Court may hear and determine this case, and may enter appropriate final orders or judgment, pursuant to 28 USC 157. To the extent necessary, the parties consent to the entry of final orders or judgment in this case by the Bankruptcy Court.

Conclusion. For these reasons, the parties jointly move for entry of an order referring this case to the Bankruptcy Court.

Dated October 14, 2005,

Respectfully submitted

/s/ R. Paul Yetter
Yetter & Warden, L.L.P
900 Fannin, Suite 3600
Houston, Texas 77010

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(2)

FILED
MAR 14 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-764

In The

SUPREME COURT OF THE UNITED STATES

---

VIRGINIA D. HATCH, BILLY F. HATCH

Petitioners

v.

RALPH J. HARPLEY

Respondent

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

# PETITION FOR REHEARING

---

Virginia D. Hatch, Billy F. Hatch
Petitioners, Pro Se
P.O Box 23318
Little Rock, AR 72211-23318
501-376-0524

## QUESTIONS PRESENTED

1. Whether the opinions issued by the U.S. Circuit Court of appeals in regards to Bankruptcy procedures that constituted a clear split of authority not only among Circuits but among the judges within the Circuits violates the provisions of *Northern Pipeline v. Marathon Pipeline* and 28 USC 157.

2. Whether 28 USC 581-589 is unconstitutional as written and as being administered by the courts and the U. S. Attorneys in America and by the U. S. Trustees, and encourages abuse of process which is a crime under 18 USC 241 and 242.

3. Whether Bankruptcy Courts have unlimited "ancillary jurisdiction" to reopen bankruptcy cases and can do so by evoking so called "piggy back jurisdiction" as done in this case. Likewise the so called "doctrine of necessity" a.k.a. "equitable mootness" that is frequently used to defeat objections to collection efforts after the funds are hurriedly paid out and legal fees accessed.

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## PETITION FOR REHEARING

Pursuant of Rule 44.2, Petitioners respectfully petitions this court for rehearing.

## ARGUMENT

This petition for rehearing is intended to clarify arguments advanced in the original petition for certiorari.

The underlying issues herein under review is that of administering of the Bankruptcy Code by the appointed panel trustees and their hired lawyers and the apparent disregard by the judges for the provisions of *Marathon* and the United States Code.

This petition for rehearing is not submitted as an empty formality and the previous denial of certiorari should not be prejudicially treated as a definitive determination, subject to all the circumstances of such an interpretation. Therefore, now the petitioners make appropriate showing that substantial matters are presented on rehearing and appropriate opportunity should be given for doing so. The respondents failed to respond to the initial writ and also failed to attempt to file a waiver of response.

The silence of the respondents speaks volumes about the merits of their posture and simply put, they do not have a valid comeback to the questions presented in this case.

Petitioners respectfully submits that the instant case offers an excellent opportunity for this court to affirm its historic mandates in *Marathon* and correct the misuse of the Bankruptcy Code as simply a collection agency by the ring of Bankruptcy Judges and lawyers to create as many legal fees as possible at outlandish contingency rates of 40% to 50% and as much as $10,500 per page document. Their sole purpose is to milk Bankruptcy estates of as much as possible by creating false claims, encouraging continuous litigation in the form of adversial proceeding and extending the case for years thereby depriving the debtor any benefit of a "fresh start" which is the intent of the Bankruptcy code.

The total misconduct of Bankruptcy Judges, panel trustees and their lawyers in this case is but an example of what the administration of the Bankruptcy Code has sunk to in this country. The title "Bankruptcy Judge" is truly misleading in that these individual are not neutral and detached judges as envisioned by the writers of our constitution. The "Bankruptcy Judges" employed today are nothing more than collection officers who think that their sole responsibly is to facilitate the collection of money and award legal fees to the legal community. The rights

of the debtor and debtor attorneys are minimized and the right and benefits of the panel trustee and their lawyers are maximized. Arguing and attempting to make a case with a Bankruptcy Judge is like arguing a case with the chief collection officer of the Internal Revenue Service.

The instant case that the petitioners present via this petition has had ten Bankruptcy and Magistrate Judges in two states and eight District Judges with a hand in it since the reopening of this case in 1998. The reopening was not done with any form of consent of the debtor nor were there any creditors to pay. The case was simply reopened in order that the panel trustee could hire a lawyer to start billing fees and go fishing for someone to pay thereby creating fees. This "Bankruptcy Collection Apparatus" operates like a giant octopus stretching its lengthy tentacles across the state lines in search of any rock that it can overturn for a fee. The panel trustee and their hired lawyers act like blind dogs in a fresh meat house and like the indomitable Eliott Spitzer in a bordelo. Meanwhile the debtor languishes awaiting their so-called "fresh start".

This instant "horror story" has its beginning in the Northern District of Texas where the Bankruptcy Judge Harold Abram son presided. His reputation in the general public has led to his being referred to unofficially as "Harold the Horrible". Likewise the Bankruptcy Judge in Florida, Catherine MeEwen was widely know by the general public as "Catherine

the Great" and Judge Thomas E. Baynes was affectionately know as "Elmer Fudd". In the Northern District of Texas, the current judge assigned to this case is know as Harlan Dewayne "Cooter" Hale. Judge Cooter is very proud of his unique name and his office answers the telephone as "Cooter's Office." Although these name are not official nor are they considered appropriate by the petitioners, they are mentioned here to demonstrate just what the general public thinks of these people. It is similar to the names that the commoners in medieval times gave to their rulers who gave them such grief while lording over them in the feudal system such as the King of England, Edward I, known as "Longshanks". The short of it is that the general public, namely business people who make this country go, tend to think that these so called judges know as little about business affairs as a pig does Sunday.

This appeal grew out of an adversary proceeding filed in the Florida Bankruptcy Court in 2002 where the judge claimed jurisdiction by "piggy back". Later the same judge also claimed jurisdiction because it was "very much core" even though the complaint only asked for "related to jurisdiction". The complaint was never amended therefore the burden is still theirs to prove jurisdiction as shown by the recent order issued by that bankruptcy court on December 6, 2007.(Appendix A)

The case of *In re Ashe*, 227 B.R. 457, (C.D. Cal

1998), an adversarial proceeding is required to reopen a closed bankruptcy case. In the base bankruptcy case of petitioner Virginia D. Hatch in the Texas Bankruptcy Court, only a one page motion was filed to reopen and it was not served on the petitioner. Therefore that case was never legally reopened and each and every act in the case from the alleged reopening is a "nullity". Clearly the United States Trustee reopening of the case was by "Ambush" as is spelled out in the explanation of core jurisdiction in this courts decision in the case of *Northern Pipeline Co. v. Marathon Pipeline Co,* 458 U. S. 50(1982). The case of *In re STN Enterprises, Inc.*, 73 B.R. 470, 483-485, 491-2, explains why the trustee complaint in both Florida and Texas are insufficient. Likewise the trustee motion for turnover under 11 USC 542 was improper as that motion could only be under USC 543 and against legal custodians of the property. Under 28 USC 157(c)(2), written consent for all parties was required. No consents were requested nor obtained.

Since the filing of the original writ of certiorari, the case of *In re Barnes*, 365 BR 1 (Bkrtcy D. Dist. Col. July 01, 2007) has come to the attention of the petitioners. In that case the defining of jurisdiction in bankruptcy court is ultra clear as to "ancillary jurisdiction" in a bankruptcy court and how Bankruptcy Rule 2004 comes into play. The court cites the precedent as being *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U. S. 375, 114 S. Ct. 1673, 128 L. Ed.2d 391 (1994). Clearly *Kokkonen* allowed the bankruptcy judge in Texas to enforce the

petitioners discharge order of October 05, 1993 and the order granting judgment discharge closing the litigation forever and acting as res judicata, law of the case and collateral estoppel for all time. *Kokkonen* describes "ancillary jurisdiction."

> "The doctrine of ancillary jurisdiction.....citing *Fulton Nat. Bank of Atlanta v. Hozier* 267 U.S. 276, 280 (1925) "No controversy can be regarded as dependent or ancillary unless it has direct relation to property or assets actually or constructively drawn into the court's possession or control by the principal suit"....jurisdiction .based upon the fact that the court, in a prior decree... had expressly reserved jurisdiction to adjudicate claims against judicially conveyed property, and to retake and resell the property..."

Therefore, petitioner Virginia Hatch's final order of discharge dated October 05, 1993 and the final order in the adversary proceeding 95-3592 discharging the IRS claim in which the Bankruptcy Court did not "specifically retain any jurisdiction in the discharge order is the law of the case. Without such specific retention of jurisdiction for future challenges by any party all that can be done now is to honor the discharge and the agreed settlement order as filed in the adversary proceeding and the main bankruptcy case. *Kokkonen* further states:

> "No case of ours asserts, nor do we think the concept of limited federal jurisdiction permits us to assert, ancillary jurisdiction over any agreement that has as part of its consideration the dismissal of a case before a federal court."

The case of *Pelphrey v. United States*, 674 F2d 243 (4th Cir. March 22, 1982) clearly provides guidance as to what is necessary for a plaintiff to provide with the complaint under Federal Civil Procedure Rule 56, before a summary judgment such as was awarded to panel trustee Harpley (respondent) on February 06, 2002 and again on March 06, 2003 then again on June 20, 2003 so that he could sell 3,931 shares of stock certificates. On pages 246 and 247 *Pelphrey* provides that:

> "when a party supports a summary judgment motion with proper affidavits, the opposing party must set forth specific facts, in affidavit or otherwise, demonstrating that there is a genuine issue for trial." (citations omitted) Allegations contained in the pleadings do not create an issue sufficient to overcome a summary judgment motion supported by affidavits.

Respondent Harpley only attached the affidavits of the petitioners that said that petitioner Billy F. Hatch was the sole owner of the stock certificates. Harpley provided no affidavits from anyone nor any evidence to support his case. He only

exhibited the face of the stock certificates, concealing the back side of the certificates which show that his client the debtor Mayer had only a survivorship interest. *Phelphrey* further states on page 247:

> "First, the plaintiff in *Sartor v. Ark. NatGas*, 321 US 620, 64 S.Ct 724, 88 L. Ed. 967 ( 1944) That summary judgment was improper because affidavits were not legally sufficient to sustain a motion for summary judgment. The plaintiff in *Sartor* unlike Ms. Phelphrey Defendant's motion for summary judgment. Second, there had been no prior litigation in the present Pelphrey case nor has Ms. Phelphry presented any evidence rating a credibility issue."

Mayer the debtor and the client of respondent Harpley has sued the petitioners six times since 2000 claiming a interest in stock certificates. Mayer nor Harpley nor his lawyers, have ever provided one affidavit in support of their contentions.

The case of *Phelphrey* clearly disproves the claims made by the current bankruptcy judge in Florida on page Appendix 5 where she goes on about rule 7052 how she does not have to reduce her findings of fact and conclusions of law to a written order, but that she can slip slop around and let the court reporter take it all down and then since she banned the petitioners from attending all hearings, they can buy the order if they want one which

required purchasing the official transcript for the court reporter. In this instance the respondent and his lawyers have run up legal fees in excess of $157,000 (73% of total assets) which proves that the case was about nothing but collecting legal fees.

This argument is further supported by the case of *In re Blackwell Ex Rel, Estate of LG Services*, 279 B.R. 818 ( Bkrtcy W.D. Tex June 27, 2002) which states that the burden in on the party seeking the action of filing the motion to follow the required procedural steps. The bankruptcy judge writing in *Blackwell,* clearly understands this court's ruling in *Marathon,* and respects the ruling as well as the statutory law that Congress passed in to law as a result of *Marathon.* Pity that his brothers in robes in Texas and Florida do not do likewise. In *Blackwell*, Judge Lief M. Clark states on page 820:

> "The second choice, by contrast, is consistent with the way waiver in the litigation context normally works. When a party has a duty to take certain steps in the course of litigation, fails to take those steps, waiver is a common presumed consequence of that failure. We have already noted that a party's failure to file a jury demand within the time specified in Rule 38 constitutes a waiver of that right to have a jury trial. A failure to timely respond to requests for admissions will result in the party's being deemed to have admitted everything requested-a defacto waiver of the

Right to contest the allegations., etc."

The case of *Capital Factors Inc. v. Kmart Corp.* 291 B. R. 818 (N. D. Ill. April 10, 2003) at pages 822 -3 clearly states that there is a split of authority over the legal issue of "equitable mootness" being used to let bankruptcy trustees off the hook when they have illegally sold assets or illegally paid prepetition unsecured creditors. The court's opinion in the case laid the guidelines for dealing with panel trustees such as the respondent in this case and the panel trustee in the Texas side of this case.

*Mosser v. Darrow* 341 US 267, 71 S. Ct. 680, 95 L.Ed 927 (1951) ruled that a trustee who does not do the job or allows the resources of the debtor or as in the case of petitioner Virginia D. Hatch's bankruptcy case, sucking into the illegal estate other assets had not performed their responsibilities.

*Capital Factors* shows the split of authority at 823:

> "the seventh circuit's admonition "that a bankruptcy proceeding is equitable does not give the judge using 11 USC 105a free-floating discretion to redistribute rights in accordance with his personal views of and fairness, however, enlightened those views might be."

822:

> "The U.S. Supreme Court has taught that any

grant of authority given to the bankruptcy courts under 105 must be exercised within the confines of the code" There is a split of authority in the courts regarding whether 105 authorizes bankruptcy courts to permit preplan payment of prepetition unsecured creditors based only on 105 authority.

*Capital Factors* lists four opinions for the practice on page 822 and eight opinions against such use of 105 on pages 822 and 823. Once payment is made then the court and the trustees hide behind the "equitable mootness" doctrine just as respondent Harpley and his lawyer Levine and finally Circuit Judge Rosemary Barkett did.

*Capital Factors* provides the only sensible discussion that the petitioners have found on equitable mootness and that it has been rightfully banished from use in the 7th Circuit Court of Appeals.

> "The term "equitable mootness" was anathematized by Judge Easterbrook in the case of *In re UNR Industries, Inc.* 20 F 3d 766, 768 (7th Cir. 1994) The Seventh banished the term "equitable mootness" from the local lexicon," because it is misleading: "there is a big difference between inability to alter the outcome (real mootness) none the less, the now nameless doctrine lives on and is perhaps best described as merely the age old principle that in

> formulating equitable relief a court must consider the effects of the relief on innocent third parties."

In the present case, a most egregious act exists where the current Bankruptcy Judge in Florida has boldly stated that she "does not have to nor does she intend to spell out just which side of the split of authority that she will come down on. Such fence riding on her part could lead to her ripping her britches.

This case of petitioners qualifies for an alternative ruling by this court granting the petitioners a "Hold on the Case" or a GVR Pending the Final Outcome of the main case 92-39896 in the Northern District of Texas. AP 02-0655 out of Florida Bankruptcy 94-11705 is a mere appendage or a gross deformity and there are now related state court issues currently pending all of which grew out of the illegal search and stop, search, seizure and illegal incarcerations of the petitioners on June 03, 1998 and September 30, 1998. Resolution of 92-39896 and the state court issues may not be final in 2008. *Lawrence v. Chatter*, 94-9323 (4th Cir. 1996) and *Stutson v. US*, 94-8988 (11th Cir 1996) citing *Henry v. City of Rock Hill* 376 US 776, collectively describe and explains GVRs. Consolidation of all pending cases with subject case would be the most economical route for all parties.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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## CERTIFICATE OF COUNSEL

We hereby certify as petitioners the foregoing petition for a re-hearing is presented in good faith and is not interposed for delay and in our judgment the said petition is well founded and limited to substantial grounds not previously presented.

Virginia D. Hatch

Billy Hatch
Petitioners, Pro Se

APPENDIX A1

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re: VINCENT J MAYER and
RAMONA S. MAYER, DEBTORS. Case No.8:94-bk-11705-CPM Chapter 7

ORDER OVERULING OBJECTION TO FIFTH SUPPLEMENT TO THE APPLICATION FOR COMPENSATION FOR DENNIS LEVINE & ASSOCIATES, P.A. ATTORNEYS FOR TRUSTEE

This case is before the Court on a contested matter arising from an objection to the Chapter 7 trustee's counsel's fifth supplement to its application for attorney's fees and costs ("Objection"). The Objection was filed by Billy F. Hatch and Virginia D. Hatch ("Hatches"). The Hatches hold no allowed claim against the estate in this case. At the time they filed the Objection, their sole connection to the case was that they are non-prevailing defendants in a related adversary proceeding brought by the Chapter 7 trustee to obtain a judgment compelling them to turn over property of the estate pursuant to 11 U.S.C. section 363. All appeals as of right after a trial on the merits in the adversary proceeding have been exhausted and resolved against the Hatches.

The issue presented, therefore, is simply this: As mere losing defendants to a turnover proceeding,

do the Hatches have standing to object to an award of compensation to the trustee's attorney? The answer is just as simple: No. The litigation between the Hatches and this estate is over. Because they are not real parties in interest-having a pecuniary or legally protected interest in the outcome of the issue, the Hatches have no standing in the litigation, and thus their position cannot be considered by this Court. Stated plainly, they cannot be heard to complain about the rule of a game in which they are not players.

Some brief background of the adversary proceeding, which is Adv. Pro. No. 8:02-ap-oo655-CPM, may be necessary to an understanding of why the Hatches now lack standing, whereas at some point in the life of the proceeding they may have legitimately argued they had standing to object to certain action taken by the Chapter 7 trustee in the case. (Footnote 1) At the time the debtors filed their petition herein, the Hatches held certificated and uncertificated stock in Wal-Mart stores, Inc. jointly with their daughter, one of the debtors in this case. The Hatches' involvement with the Chapter 7 trustee began when the trustee initiated the adversary proceeding complaint against them on August 16, 2002. In the proceeding, the Chapter 7 trustee sought and, after a trial on the merits, obtained a judgment confirming that the proceeds of the estate's one-third share of the Wal-Mart stock are property of the estate. (Footnote 2) See the Courts Finding of Fact

and Conclusion of Law and Final Judgment in Adv. Pro. No. 8:02-ap-0655-CPM, Docket Nos. 119 and 120. Appeals for the Eleventh Circuit were resolved in favor of the chapter 7 trustee and against the Hatches. The latest substantive appellate activity at the Eleventh Circuit was that court's denial on September 14, 2007, of the Hatches' motion for reconsideration of the court's July 30, 2007, order affirming the judgment in favor of the Chapter 7 trustee. (Footnote 3)

At all relevant times, the Hatches have argued (albeit unpersuasively to the trial court) that the titling of the Wal-Mart stock was intended as a devise and not an inter vivo gift to their daughter. They maintain, therefore, notwithstanding their losses on appeal, that the sale proceeds held by the Chapter 7 trustee belong to them, as both of them are still alive, and not to this estate. It is understandable, then, the Hatches have objected at every turn to disposition of the proceeds in any manner other then to them.

But now that the appeals as of right are exhausted, the Hatches have no legal entitlement to raise the Objection. Despite what the Hatches have argued, the courts which have weighted in on the dispute have ruled that, as a matter of fact and Florida law, the result of the Hatches' alleged, unsophisticated attempt at estate planning is not tantamount to a will but rather effected a outright conveyance of a

property interest. Consequently, the current posture of this case is that the Hatches have no pecuniary or direct legal interest in the outcome of the administration of this case have no legally protected interest that could be affected by the winding up of this case, and thus have no standing to object to an award of fees to the Chapter 7 trustee's attorney. Se *In re Lewis*, 2007 WL 2189343*3(10th Cir. BAPJuly 31, 2007); *In re FBN Food Services, Inc.*, 1995 WL 230958 (N.D. III. April 17, 1995); *In re E.S. Bankset, L.C., 321* B.R. 590, 596 (Bankr. S.D. Fla. 2005); *cf. In re Marlar*,252 B.R. 743 (8th Cir. BAP 2000) (discussing standing to appeal bankruptcy court orders). The only parties who do have standing to object are the Chapter 7 trustee and, because the Chapter 7 trustee's liquidation efforts resulted in funds that exceed what is necessary to pay administrative expenses and allowed claims, the debtors.

Though not at all necessary to a resolution of the issue at hand (especially given the Eleventh Circuit's disposition of the appeal of the final judgment in the adversary proceeding), the Court next addresses a constant theme of the Hatches that they have raised numerous times before and again raise in the Objection: whether it is necessary for a bankruptcy court to state in writing that its jurisdiction is core. (Footnote 4) Based on the reading of *In re Maurer*, 271 B.R. (Bankr. M.D. Fla. 2002), the Hatches contend that this Court either never had any jurisdiction to consider the adversary

proceeding or at least did not render a final judgment in the proceeding because it was without jurisdiction to do so. In *Maurer*, acknowledging a split among bankruptcy courts on the issue, my colleague Judge Michael G. Williamson held that the absence of a explicit core finding under 11 U.S.C. section 157(b)(3) deprives the bankruptcy court of jurisdiction when the parties failed to make a timely request for such a determination. (Footnote 5)

I need not decide at this time which side of the split identified by Judge Williamson I should follow. That is because this Court determines, as has been announced on the record in the past, that compliance with Rule 7052, of the Federal Bankruptcy Rules of Procedure, which adopts by reference Rule 52 of the Federal Rules of Civil Procedure, supplants any need for a written finding of subject matter jurisdiction. Rule 52(a) states in pertinent part. (a) Effect...It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of evidence. Finding of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion...

The complaint in the adversary proceeding clearly alleges the basis of the Court's jurisdiction as core: That the bankruptcy court has jurisdiction over the adversary pursuant to 28 U.S.C. sections 1334(b) and 157, and that the adversary proceeding is a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(A) and (O). See Adv. Pro. No. 8:02-ap-00655-CPM,

Docket No. 1, at para. 6. In ruling against the Hatches on their motion to dismiss the complaint based on lack of jurisdiction, Judge Thomas E. Baynes, Jr.., my predecessor, stated orally in open court that "the court would go further and restate that it would deny any motion of the Hatches to dismiss on jurisdictional grounds as 28 U.S.C. 1334(d) establishes exclusive jurisdiction in this court and through the orders of the district court giving us jurisdiction over all the bankruptcy cases, as well as property of the estate and of the debtor." Adv. Pro. No 8:02-ap-00655-CPM Docket No. 30, at pg. Line 25 through pg. 5, lines 1-6. Further the Court stated "..we find all this to be very much core." Adv. Pro. No. 8:02-ap-00655-CPM, Docket No. 30, at pg. 5, lines 17-18 (emphasis added). These statements were recorded on open court and constituted the decision of the Court as to that stated attack on the complaint. The ruling complies with the requirement of 28 U.S.C. section 157(b)(3) that the "bankruptcy judge shall determine on the judge's own motion or on a timely motion of a party, whether a proceeding is a core proceeding..." Accordingly, long ago the Court make the determination of jurisdiction in a proper manner, and that determination is now and, absent a grant of certiorari review by the United States Supreme Court, will continue to be the law of this case and the adversary proceeding.

For the foregoing reasons, the Objection is overruled. The Clerk is directed to enter this order in both the case and the adversary proceeding that the

objection was filed in both. (Footnote 6) By separate order in the case, the Court will address the merits of the trustee's fifth application for an award of attorney's fees.

DONE and ORDERED that in Chamber at Tampa, Florida, on December 6, 2007.

/s/Catherine Peek McEwen
United States Bankruptcy Judge.

Footnote 1. A discussion of the myriad disputes raised both in the case and in the proceeding by the Hatches during the litigation with the chapter 7 trustee is not germane to the resolution of this latest contested matter. The details of the tortuous history of the adversary proceeding and this case--a history that both sides might describe as torturous, may be found in the voluminous record, a record comprising numerous pleading and papers, oftentimes voluminous papers with voluminous exhibits.

Footnote 2. Under Florida law, property held as joint tenants with right of survivorship are subject to alienation by each person in equal amounts. *Nationsbank, N.A. v. Coastal Utilities, Inc.*, 814 So. 2d 1227, 1229-30 (Fla, 4th DCA 2002). Furthermore, property held as joint tenants with right of survivorship may be reached by a creditor of one co-tenant. *See, e.g., Xayavong v. Sunny Gifts Inc.*, 891 So. 2d 1075, 1076 (Fla. 5th DCA 2004), *rev. denied*, 903 So. 2d 937 (Fla. 2005). The Hatches agreed that

Florida law applied. See Adv. Pro. No. 8:02-ap-00655-CPM, Docket No. 100, at page 10 (in which they concede "Florida has to be it"). Therefore, under Florida law and by the application of 11 U.S.C. section 541 defining property of the stated, the Chapter 7 trustee in this case had the right to one-third of the property at issue when the petition was filed.

Footnote 3. In the objection (at paginated page 9, which is actually the 10th page), the Hatches imply that they have sought or will seek certiorari from the United States Supreme Court. However, unless and until review is granted and a stay granted, this Court has jurisdiction to resolve all remaining issues in the case, including any an all issue relating to the completion of the administration of the case.

Footnote 4. The Hatches raise other issues in the objection. All have been dealt with in prior orders of the Court. Accordingly, the Court need not and will not re-address this issues. As an example, the Objection touches on the issue of whether the Hatches should have been granted a jury trial in the adversary proceeding. The last time the Court dealt with that issue was in connection with a motion for continuance by the Hatches. See the Court's order at Docket No. 142. Another example is the Hatches contention that the adversary proceeding raises non-core issues and thus could not be tried by the Court absent the parties' consent as provided in 11 U.S.C. section 157(c)(2). That argument is completely frivolous and likewise has already been dealt with-

most recently in the same order referred to in this footnote. As noted in the body of this order below, the complaint in the adversary proceeding invokes solely core jurisdiction, and that core jurisdiction was acknowledged on the record and in open court by my predecessor judge.

Footnote 5. Judge Williamson noted, however, that "there is substantial authority to the contrary holding that a party's failure to request a section 157(b)(3) finding waives any objection to the lack of such finding." *Maurer, 271* B.R. at 211n. 13.